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December 11, 1998

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VIA COURIER

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RECEIVED
DEC 11 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Satellite Delivery of Network Signals
To Unserved Households for Purposes
of the Satellite Home Viewer Act**

CS Docket No. 98-201

RM No. 9335

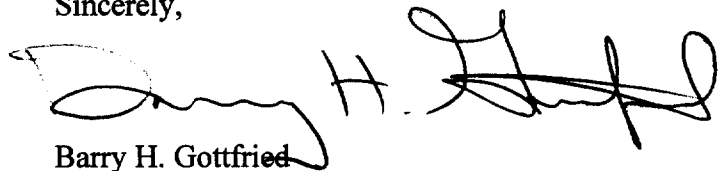
RM No. 9345

Dear Ms. Salas:

Submitted herewith, on behalf of Fisher Broadcasting, Inc., are the original and eight copies of its Comments in the captioned rulemaking.

If there are any questions regarding this matter, please contact the undersigned.

Sincerely,



Barry H. Gottfried

BHG/mm

encl:

cc: Don Fowler (w/diskette)
International Transcription Service, Inc. (w/diskette)

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ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

RECEIVED

DEC 11 1998

In the Matter of)	FEDERAL COMMUNICATIONS COMMISSION
)	OFFICE OF THE SECRETARY
Satellite Delivery of Network Signals)	CS Docket No. 98-201
to Unserved Households for)	RM No. 9335
Purposes of the Satellite Home)	RM No. 9345
Viewer Act)	
)	
Part 73 Definition and Measurement)	
of Signals of Grade B Intensity)	

To: The Commission

COMMENTS OF FISHER BROADCASTING INC.

Fisher Broadcasting Inc. ("Fisher"), by and through its attorneys, hereby submits its Comments in the above-captioned proceeding. For the reasons set forth below, Fisher opposes the revisionist approach suggested by the home satellite industry. The Commission should not adopt a new special definition of "Grade B" intensity for the sole purpose of permitting importation of distant, duplicating network signals by satellite receiver owners.

The ability of Fisher's television stations and other local network affiliates to continue to produce and broadcast their extensive local news and local public information programming will dramatically decrease if the Commission reduces the Copyright Act's copyright protections for local network affiliates against the importation of distant network affiliates to satellite subscribers. The Commission should reject the self-serving suggestions of EchoStar Communications Corporation ("EchoStar") and the National Rural Telecommunications Cooperative ("NRTC") to reduce copyright protections and thus to seriously damage network

affiliates' ability to continue their commitment to localism in broadcasting -- the value of the commitment to localism of Fisher and others has been one of the fundamental principles underlying the broadcast service since its inception.

Fisher's Commitment To Localism

1. Fisher is the licensee of two television stations, KOMO-TV, Seattle, Washington and KATU(TV), Portland, Oregon, both of which are affiliates of the ABC Television Network. Fisher has also recently filed applications seeking Commission consent to acquire eleven additional television stations: KIDK(TV), Idaho Falls, Idaho; KLEW-TV, Lewiston, Idaho; KBCI-TV, Boise, Idaho; KCBY-TV, Coos Bay, Oregon; KPIC(TV), Roseburg, Oregon (50% interest); KVAL-TV, Eugene, Oregon; KIMA-TV, Yakima, Washington; KEPR-TV, Pasco, Washington; KJEO(TV), Fresno, California; WFXG(TV), Augusta, Georgia; and WXTX(TV), Columbus, Georgia. All the stations that Fisher seeks to acquire are affiliated with a national network: the two stations in Georgia are affiliates of the Fox network, while the nine stations in the Northwest are all CBS affiliates.

2. Fisher, and its predecessor, have owned and operated broadcast facilities in the Pacific Northwest for over seventy years, since 1926. The company has always been locally owned and managed and has been nationally recognized for its exemplary record of commitment and service to its community. Indeed, local public service is one of its core business principles. Fisher believes that such community involvement contributes to the public interest as well as to the ultimate success of its stations.

3. Consistent with its commitment to its community and to the principles of localism that are central to broadcasting, KOMO-TV produces award winning local news programs that are consistently highly rated. KOMO-TV also produces programs such as "Northwest

Afternoon," a daily live Emmy winning talk show broadcast from 3:00 to 4:00 p.m. providing information and entertainment programming of interest to its studio audience and to the community at large in the Northwest, which draws high ratings in its time period against such competition as "Rosanne" and "Montel Williams"; "Town Meeting," which airs each Sunday at 6:00 p.m. and features discussions by guests and local audiences of issues important to people living in the Northwest; and "True Colors," a series that focuses on diversity issues and interesting people from the communities of the Puget Sound area, co-produced by KOMO-TV and PBS affiliate KCTS, and airing Sundays at noon on KOMO-TV as well as on KCTS at a different time.

4. Fisher also operates KATU(TV) in a manner consistent with the company's commitment to serve its communities. KATU(TV) produces the highest rated local news shows in two of three time periods in the highly competitive Portland market, as well as programs such as "AM Northwest," the Northwest's longest running daily talk show, broadcast every weekday for one hour beginning at 9:00 a.m., and featuring guests of interest to viewers in the Northwest; and "Town Hall," which airs each Sunday and features discussions by guests and local audiences of issues important to people living in the Northwest.

5. Fisher's KOMO-TV also produces "How 'Bout That," a weekly half-hour children's program that runs on both KOMO-TV and KATU(TV). "How 'Bout That" has won the prestigious National Parents Choice Gold Award. The program is designed to touch the imagination of viewers under the age of 12, exploring how dreams and ideas become a reality through original music videos.

6. The stations that Fisher proposes to acquire have also been committed to the principles of localism under operation of their current owner, Retlaw Broadcasting Co. For

example, KBCI-TV in Boise, Idaho has joined with all of Idaho's other CBS affiliates to create the Idaho News Network. Drawing from KBCI and CBS affiliates in Twin Falls, Idaho Falls and Lewiston, the Idaho News Network has news professionals covering a large part of Idaho. The stations are connected directly by microwave, allowing for prompt coverage of breaking news in Idaho. Similarly, KVAL-TV, Eugene, Oregon, is interconnected with its sister CBS stations in Coos Bay and Roseburg to provide comprehensive coverage of the entire DMA through the Northwest News. Fisher fully intends to continue the efforts of the stations it proposes to acquire to serve their communities, just as Fisher has done for the last seventy years as a broadcaster.

**The Proposed Changes Will Irreparably Harm
Fisher's Ability To Serve Its Communities**

7. Fisher's local news and public information programs are of interest to persons within the Grade B contour of its stations and, indeed, throughout its entire television markets. It is axiomatic, however, that these programs are valuable only to those viewers who actually have Fisher's stations available to them on their televisions, either over-the-air or on cable or by satellite delivery. If households in the Seattle or Portland markets who have satellite receivers do not receive the signal of their local Fisher station from the satellite, but instead receive a different ABC affiliate from another market, then these households will be unable to watch local programs such as "Northwest Afternoon," "Town Meeting" and "How 'Bout That." This is contrary to the public interest in localism, a bedrock principle of broadcasting from the beginning. *See* Radio Act of 1927, § 9, Pub.L. No. 632 (current version at 47 U.S.C. § 307(b) (1997)). It also damages Fisher's ability to continue to produce and broadcast this vital local programming, because lost potential local viewers mean lower ratings and lower advertising revenues. Although it is committed to serving its community, Fisher may not be able to continue to produce quality programs such as "Northwest Afternoon" if the Commission changes its rules to allow diversion

of its local audience for these programs to distant network affiliates carried on a satellite service.

8. The ability of the stations that Fisher proposes to acquire to maintain their commitments to efforts such as the Idaho News Network and the Northwest News may be even more significantly damaged if those who own satellite receivers in their television markets receive a distant affiliate of the same network. The stations that Fisher has applied to acquire are primarily located in small markets (below DMA No. 100) and are even more likely to be adversely affected economically by importation of distant major market stations that can afford more of everything. Fisher may well be unable to continue its commitment to produce quality local programs and news coverage if these stations' audiences are diverted to major market affiliates.

9. These dramatic injuries to the public interest and to local programming would occur if the Commission were to accept the proposals by EchoStar and NRTC to increase the number of households that are deemed to be "unserved." Any such change would substantially increase the number of people in the markets of Fisher's stations who would receive a network affiliate from a different market, rather than Fisher's local stations, through satellite delivery to their homes. These persons would not receive Fisher's local news and public information programming on their satellite service; and, as explained above, the public interest in localism would therefore be injured irreparably. By allowing the importation of distant network affiliates into local areas, the proposals by EchoStar and NRTC will also undermine the unique national network/local affiliate broadcast distribution system -- the basis of the national/local *free*, over-the-air television program service.

10. Especially in light of these irreparable injuries to the basic underpinnings of the broadcast service, it would be highly inappropriate for the FCC to gerrymander the definition of

Grade B service so that it means one thing for purposes of the Copyright Act and something different for all other regulatory purposes. Congress knew exactly what it was doing when it adopted the current Grade B standard for measuring unserved areas. Indeed, Grade B contour maps for *every* local television station were and are readily available in two widely available publications -- the Television and Cable Factbook and the Cable & Station Coverage Atlas. In any case, improved transmission and receiving equipment produces a significantly better picture today than in 1951 when the Grade B db/U levels were established, and there is thus no justifications whatsoever for *increasing* the db/U levels required for a Grade B signal.

11. In addition to these matters of sound policy and common sense, there is grave doubt about the Commission's legal authority to shrink network affiliates' copyright protected areas by, for example, increasing the db/U levels required for a Grade B signal. Congress froze the FCC's definition of a Grade B signal when it adopted the Satellite Home Viewer Act in 1988. Only Congress, not the Commission, can change the definition of a Grade B signal.

12. It should be noted that Fisher is a supposed "beneficiary" of distant signal carriage by satellite services: KOMO-TV is one of the network affiliates carried to households nationally as part of the PT West package provided by PrimeTime 24 to the millions of subscribers to the DirecTV satellite service. It might therefore appear logical that Fisher would favor the expansion of the number of eligible subscribers for its station which would result from the proposals by EchoStar and NRTC. But Fisher strenuously opposes any expansion of the "unserved" areas, even though some might argue that this would increase KOMO-TV's "national reach." The importation of KOMO-TV into more households in other markets would not be a benefit to the public interest, but would instead cause serious damage to other local network affiliates' efforts to serve their local markets. At the same time, the proposed changes would, as explained above,

undermine Fisher's own local markets and irreparably damage Fisher's ability to maintain its commitment to localism.

**The Commission Lacks Authority To Expand
The Definition Of "Unserved Areas"**

13. The FCC does not have legal authority to substitute the Copyright Act's "actual site signal measurement" standard for unserved households, *see* 17 U.S.C. § 119(a)(8)(A)(ii), with a "predicted signal" standard. The Act's standard is not whether a household is predicted to receive a Grade B signal from a local affiliate, but instead whether the signal can actually be received according to a site measurement test conducted at the household. Two federal courts have confirmed that the standard for unserved households is based on actual measurements.

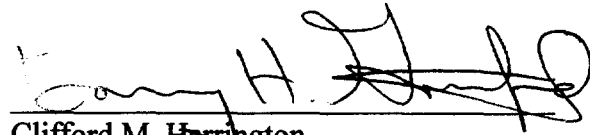
14. To be sure, Fisher understands that the Commission may believe that steps should be taken to enable satellite carriers to be more competitive with cable. Fisher does not believe that this is necessary, given that the satellite industry is growing dramatically and appears to be succeeding financially. But even assuming for the sake of argument that satellite carriers needed some sort of competitive boost, the way to increase competition is not to change the Grade B standard. Rather, the solution is for *Congress* to enact "local-to-local" legislation for satellite services, containing must carry and retransmission consent provisions comparable to those for cable, thereby making the programming available on satellite services more comparable to the mix of local broadcast stations and other channels available on cable systems. As the Commission is aware, on November 30, 1998, EchoStar announced an agreement whereby News Corporation Limited and MCI Telecommunications Corporation/WorldCom will transfer to EchoStar the license to operate a high-powered DBS satellite at the 110 degrees West Longitude orbital location consisting of 28 frequencies, and the sale of two satellites that are currently under construction. And as reported in the Business Wire of that same date, EchoStar will then be

"positioned to become a one-dish solution for local-to-local channels." Thus, legislation permitting local-to-local carriage of broadcast stations will serve as a *practical* means of allowing satellite systems to carry network and local programming that is available over cable and therefore competing more effectively with cable. By making Fisher's stations and other network affiliates available over the satellite in their own local markets, "local-to-local" delivery of broadcast stations by satellite could boost competition without irreparably damaging the fundamental policy of localism in broadcasting.

Respectfully submitted,

FISHER BROADCASTING INC.

By:



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Dated: December 11, 1998